S.B.CIVIL WRIT PETITION NO.1131/2006

Sukhmander Singh & Anr.

Versus

The Superintending Engineer, Irrigation Circle, Hanumangarh Sangam & others.

Date of Order :: 11th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Ramandeep Singh Sidhu, for the petitioners.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given by the petitioner to the order dated 14.2.2006 passed by learned Superintending Engineer, Water Resources, Hanumangarh rejecting appeal preferred by him to assail validity of the order dated 29.12.2005 passed by the Executive Engineer, Irrigation Circle-I, Hanumangarh Junction. By the order dated 29.12.2005 the Executive Engineer debarred the petitioner for the irrigation facility from Canal Irrigation for a period of one year and also imposed a penalty by 20 times. The action aforesaid was taken by holding the petitioner guilty for using water without permission and also at a time prohibited by the proper authorities.

The orders aforesaid are challenged before this Court mainly on the count that those are non-

speaking orders and also without having any material or substance to support the findings. It is asserted by the counsel for the petitioners that no finding was given by the Executive Engineer regarding unauthorised use of water by the petitioners. Whatever said by the Executive Engineer is general in nature and on that basis no penalty could have been imposed upon the petitioners. The contention of the petitioners before the appellate authority was that no material was available before the Executive Engineer to hold him guilty for using water without permission or during the prohibited hours. The appellate authority by the order impugned affirmed the order passed by the Executive Engineer without considering the contention of the petitioners.

In reply to the writ petition the respondents have stated that the unknown cultivators who were standing at the outlet of chak 29 KSD ran away seeing the patrolling party, thus, the Assistant Engineer directed a team of two patwaris to record the irrigated land from 7 p.m. On 30.10.2005 to 5 a.m. on 31.10.2005 vide letter dated 31.10.2005 and then it was found that the farmers whose turn fall between 7 p.m. to 5 am. are habitual of taking excess water from canal using wooden fatty.

From reading of the reply it reveals that as a matter of fact no finding was there about any

specific farmer. Whatever said is quite general and all the persons of the area concerned have been debarred from irrigation facility and are subjected to 20 times penalty. It is also pertinent to note that so far as the petitioners are concerned, they were not having irrigation turn during the period concern as the water turn allowed to them was from 5.56 p.m. to 9.56 p.m. and also from 4.46 a.m. to 6.00 a.m.

It is well settled that a pecuniary provision cannot be used by settling liability in general. A penalty can be imposed only after holding a person guilty for specific act by giving specific finding. From reading of the order passed by the Executive Engineer as well as by the Superintending Engineer and also the averments made in reply to the writ petition, it is apparent that without determining guilty and liability in specific, a general order was passed by the Executive Engineer for debarring irrigation facility. The Executive Engineer should have examined all the material available and should have given a specific finding holding the farmer concerned guilty before taking any action under Rule 36 of the Rajasthan Irrigation and Drainage Rules, 1955.

In the instant matter, as said above, no specific finding is given by the irrigation authorities to hold the petitioners guilty for using

water without permission. The orders impugned, therefore, are bad in eye of law.

Accordingly, the petition for writ is allowed. The orders passed by the Executive Engineer dated 29.12.2005 and by the Superintending Engineer dated 14.2.2006 are hereby quashed.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.